

Before the Board of Zoning Adjustment, D. C.

Application No. 11933 of the Florence Crittenton Home on behalf of St. Patrick's Episcopal Day School, pursuant to Section 8207.2 of the Zoning Regulations for a special exception to permit a private school for pre-school and elementary school aged children as provided by Section 3101.41 and Section 3101.42 of the regulations, in the R-1-B Zone at the premises 4759 Reservoir Road, N.W., known as part of Lot 809, Square 1372.

HEARING DATE: December 3, 1975

DECISION DATE: January 14, 1976

FINDINGS OF FACT:

1. In BZA Application No. 11307, this Board on March 6, 1975 entered an Order granting the same applicants permission to establish a school for kindergarten through sixth grade on the same property. After an appeal to the District of Columbia Court of Appeals, the Court by Opinion and Order dated August 26, 1975, affirmed the Order of the Board. Rose Lees Hardy Home & School Ass'n, et al. v. District of Columbia Board of Zoning Adjustment, 343 A. 2d 564 (D.C. App. 1975).

2. In this application, applicants seek a modification or site adjustment of the site plan approved by the Board in BZA Application No. 11307 in two essential respects; (1) location of the building; and (2) shape and configuration of building. Applicants seek these changes in an effort to make the construction more efficient and economical to off-set the increased costs of construction resulting from two years of litigation. In all other respects, there is no substantial change from Application No. 11307.

3. The property is located in an R-1-B District and contains approximately 75,000 square feet fronting on Whitehaven Parkway approximately 500 feet from Foxhall Road and approximately 500 feet from MacArthur Boulevard, N.W.

4. The property is located in an area in which there are several institutional uses. Immediately to the west is the Florence Crittenton Home; immediately to the north is Mount Vernon College; and immediately to the east is a United States Reservoir. Also, in the area are Our Lady of Victory Elementary School and the Georgetown Day School previously approved by the Board.

5. The applicant proposes to establish a school for kindergarten through the sixth grade on the site in a single building for the St. Patrick's Church Episcopal Day School. There will be a maximum of 230 students enrolled in grades one through sixth, and a total maximum future enrollment on the site of 280 children. There will be approximately 29 teachers and administrative personnel.

6. The subject site has a varied topography with a high point at the southeastern corner at an elevation of approximately 232 feet and a low elevation at the northwestern corner of the property of 167 feet. The site is steep in its topography at the southern portion and relatively level at the northern portion.

7. Applicants seek approval of a site plan which was submitted to the Board and is contained in the record. The site plan calls for a building to be located approximately 160 to 170 feet removed from the southern property line and fronting on Whitehaven Parkway. In BZA Application No. 11307, the building was to be located approximately 45 feet from the southern property line. The proposed building in this application will permit the retention of a great number of large, mature trees which would have been eliminated under the previous application. With regard to the configuration of the proposed building in this application, the building will be basically rectangular in shape but designed so that it can be more easily constructed in two phases from the standpoint of function and ease of construction.

The building will have a side yard on the southwest side, 12 feet at its narrowest point; and thus, the building will be located approximately 100 feet from the Crittenton Home driveway. The other side yard to the northwest is approximately 160 feet in width. The rear yard at its minimum depth is 35 feet ranging to approximately 160 feet.

The height of the building will be approximately 38 feet and the lot occupancy will be under approximately 20 per cent. The play space will be provided in three areas; (1) a grassy playing field 120 feet by 160 feet to the northwest of the building to continue the open space on the Whitehaven side of the Reservoir; (2) a nearly level area of 90 feet by 100 feet on the hill nearest the lot line; and (3) the wooded hillside. The play area will contain approximately 20,000 square feet.

8. Pedestrian access to the site will be by way of Whitehaven Parkway directly to the building and for motor vehicles by way of a driveway abutting Whitehaven Parkway to the building with parking under the building for 19 cars and four additional spaces to the side apron of the driveway.

9. As indicated at public hearing, the applicants will provide as required by the Department of Transportation a circular driveway with an arrival and departure facility meeting the criteria of the department.

10. The site plan provides a greater rear yard, greater side yards, less lot occupancy and approximately the same height as would be required for a single-family dwelling in the R-1-B District.

11. St. Patrick's School has existed at 1655 Foxhall Road, N. W. since 1956 with Board approval for approximately 130 nursery school students.

The School has provided kindergarten and elementary educational facilities (grades 1-6) at 9440 Logan Drive, Potomac, Maryland for 206 students, of which, for grades one through sixth approximately 77 per cent of the students are from the District of Columbia and for kindergarten approximately 60 per cent of the students are from the District of Columbia. The school seeks to locate these students plus added capacity up to a maximum of 280 students at the proposed location. The new site is approximately 2,500 feet from the St. Patrick's Episcopal Church and Day School and will be more accessible to the clergy and staff of St. Patrick's Episcopal Church and nursery school.

12. At the public hearing, the applicants presented and the Board credits the detailed testimony in support of the application consisting of the statement of the Rector of St. Patrick's Episcopal Church, who testified on the school's philosophy and relationship to the Church, the need for the school and search for an appropriate site; the Director of the School, who testified as to the existing and proposed operation of the school, its present location, the difficulty in providing transportation to the present Maryland location with the vast majority of students presently coming from the District of Columbia, the carpooling arrangements promoted by the school, the number of cars that would handle student transportation daily when the school reaches

maximum enrollment (35-40 cars) and the location of the homes from which the student body is drawn; the architect, who testified as to the location, siting of the school, circulation, proposed facilities on public space for arrivals and departures and other requirements of the Zoning Regulations; a land planner and traffic consultant, who testified as to the compatibility of the proposed school with surrounding uses and zoning in the area as well as the traffic flows indicating that the amount of traffic generated by the proposed school would be minimal, that from his own personal observation and investigation traffic on MacArthur Boulevard in recent years had decreased and that the highway capacity and traffic controls in the area can easily absorb the slight additional traffic generated by the school; and an appraiser and realtor who testified as to the lack of adverse affect of a private school on neighboring properties.

13. The Municipal Planning Office submitted and the Board credits a report on the application which concluded that the proposed use is consistent with the general purpose of the Zoning Regulations and Map and recommended approval. That report dealt with the facts surrounding and supporting the application, including the requirements of Section 3101.41 and Section 3101.42 and specifically covered traffic, concluding that no adverse traffic impact will occur at this location.

14. The District of Columbia Department of Transportation submitted a report and testified at the public hearing through its representative. Based upon personal observation of the traffic in the area, the representative concluded that the level of service on MacArthur Boulevard and Foxhall Road would be Level of Service B and that during a 30-minute period of observation no more than a dozen automobiles passed the proposed site on Whitehaven parkway. The report concluded that the relatively small number of vehicles generated by the proposed school would not have a measurable impact on the street system and would not cause an adverse impact. The Board credits this report and testimony. The representative of the Department of Transportation further testified at the public hearing and the Board finds that the arrival and departure facilities can be provided in public space pursuant to the criteria of the Department of Transportation.

15. The applicants comply with the specific requirements of Section 3101.41 as follows:

a. The school will have no articles of commerce for sale as indicated by the Director of the school.

b. The use and activities to be conducted at the school are so located that they will not be objectionable to adjoining and neighboring properties because of noise, traffic, number of students or other objectionable conditions as established by the findings hereinabove made and the following:

i. The proposed school building is setback substantially from all lot lines and will be removed from the southern property line a distance of approximately 160-170 feet which adjoins the only property developed for single-family use. Such a setback enables the retention of numerous large trees and other natural screening.

ii. The remainder of the uses to the east and west being a reservoir and an institutional use will not be adversely affected by reason of noise or number of students.

iii. With respect to traffic, Whitehaven Parkway will adequately serve the property as direct access and there is no indication that there will be any congestion on Whitehaven Parkway. An arrival and departure circular driveway will be established as required by the Department of Transportation.

iv. The Department of Transportation, upon study and examination of the site, recommended favorably on this application.

v. The site has good access to major arterial roadways in the District of Columbia by way of Foxhall Road, MacArthur Boulevard and Reservoir Road. These roads and their intersections with Whitehaven Parkway operate at a high level of service which will not be significantly affected by traffic generated by the school.

vi. Interior circulation to the school provides for a separate pedestrian accessway from a vehicular roadway entering the underground parking area. Nineteen spaces are provided below the building and four spaces are provided to the side of the building.

vii. The relocation of the school will permit the large majority of students who live in the District of Columbia to use public transportation or instead of automobile carpools, to walk to the school and will eliminate some traffic that presently utilizes streets in the area going out to Potomac, Maryland. The school has a sound policy for promoting school carpools and it is expected that the use of the automobile will substantially decrease by virtue of the relocation to the intown site.

viii. The number of students will not have any adverse affect upon surrounding properties because they will be substantially removed from the lot lines.

ix. Approximately 50 students will be the maximum number of students in the kindergarten and there is more than 100 square feet of play space available for each pre-school child.

x. The hours of operation will be from 8:30 a.m. to 3:00 p.m. for regular classes with occasional special activities outside these hours.

xi. The pre-school use will be reasonably necessary or convenient to the neighborhood which it will serve since it has excellent access to the 10-block radius area. The testimony of and chart prepared by the Director of the school established that approximately 55% of the kindergarten children presently are from a 10-block radius of the proposed site. The Director expects this percentage to increase by virtue of the move of the school to the new site from the Maryland location.

16. The applicant complies with the provisions of Section 3101.42 as follows:

- a. The use is not likely to become objectionable to adjoining and nearby property by virtue of the careful site layout and building design as previously described herein.
- b. The Board finds that ample parking spaces will be provided by the 23 spaces available on the site to accomodate students, teachers and visitors likely to come to the site by automobile. Article 72 of the Zoning Regulations requires 19 parking spaces. The school makes use of a well organized and efficient car-pool system for the children and many of the teachers (TR pg. 77). Parents are not required to participate in the school program thereby eliminating visits to the site during the school day and there are no continuing night programs only an occasional parents' meeting. The school conducts no programs with any agency or group that would bring a lot of people to the school during the day (TR pg. 87,88).
- c. The Department of Transportation and the Municipal Planning Office support the application as requested.

17. This Board in previous cases has granted similar requests for the establishment of pre-schools and elementary schools for similar locations. This site, however, is uniquely and favorably situated by virtue of the surrounding uses and topography, which permits separation of a school building from surrounding uses. The Board finds that the construction of this school building and the establishment of the school will not have an adverse affect on property values in the neighborhood.

18. There are letters in the file both in support and in opposition to the school. The only opposition to the application appearing at the public hearing were Mr. & Mrs. Edward Cohen (property owners of land adjoining the southern property line of the site) and the Six-School Complex. The Cohens offered no probative evidence or facts for the record which significantly rebutted the testimony and evidence submitted by the applicants, the Department of Transportation or the Municipal Planning Office. The Six-School Complex, while appearing initially at the hearing through a representative, did not submit any evidence in opposition. The Cohens' opposition appears to have been based on a general concern that there should be no more institutional use in the neighborhood.

OPINION AND CONCLUSIONS OF LAW:

The Board is of the opinion that the proposed school use for kindergarten through grade six meets the requirements of Sections 3101.41, 3101.42 and 8207.2 of the Zoning Regulations. The school at the proposed location, with one exception, is virtually surrounded by institutional uses. The open space requirements of zoning which are applicable to single-family development are more than met by the careful site layout of the school. The school use as a special exception is predeemed compatible and we find no evidence of any type to indicate that the establishment of the school is not in complete harmony with the intent and purposes of the Zoning Regulations and the R-1-B Zoning Regulations. In fact, the location of the school in the District of Columbia serves far better the neighborhood in which it is located than having the school located in Potomac, Maryland. The 75,000 square foot lot offers ample room for use for school purposes without any adverse affect on the neighborhood.

At the public hearing on December 3, 1975, the opposition, through its representative, filed three motions: (1) objection to Mr. Harps involvement with Application No. 11933, (2) motion to include consideration of impact on area public schools at the public hearing and (3) motion to clarify status of Application No. 11307. At the public hearing, the Board resolved the first two requests and reserved ruling on the third.

1. With regard to the objection to Mr. Harps' involvement with Application No. 11933, Board Member Harps, in light of the pendency of proceedings before the Board of Elections and Ethics, voluntarily determined not to actively participate in BZA Application No. 11933 until such time as the matter was resolved before the Board of Elections and Ethics. However, Mr. Harps remained present throughout the hearing to observe the proceedings in order that he could participate at a later date.

2. With regard to the opposition's motion to include consideration of impact on area public schools at the hearing, the Board denied the motion on the basis that the Board itself in BZA Application No. 11307 had ruled that such consideration was not within the scope of its authority under the Zoning Regulations and because the District of Columbia Court of Appeals in its Opinion of August 26, 1975 affirmed that determination of the Board.



3. With regard to the opposition's motion to clarify status of Application No. 11307, the Board reserved ruling until the parties could file memoranda on the question raised. Essentially, this motion seeks to have this Board rule that an application for a building permit pursuant to the Board's Order in Case No. 11307, which has not yet been filed with the Zoning Administrator, is barred under the six-month limitation set forth in Section 8205 of the Zoning Regulations. We deny the motion and state as reasons for the denial the following:

First, the matters raised by the motion are irrelevant and prohibited from consideration by the Zoning Regulations. The sole question before the Board in Application No. 11933 is a request to establish a parochial school under Sections 3101.41 and 3101.42 of the Zoning Regulations. There is no question before the Board of the right under the Order of the Board to apply for a building permit. Section 8202.7 of the Zoning Regulations prohibits the Board from considering requests for advice or moot questions. Since no application has been filed for a permit under Case No. 11307, a conclusion by the Board would be purely advisory and would be on a moot question.

Secondly, the Cohens and Six-School Complex are estopped from asserting the applicants were required to apply for a building permit within the six-month period by virtue of the fact that the Cohens and two members of the Six-School Complex within time limitations of the District of Columbia Court of Appeals filed an appeal from the Board's Order of March 6, 1975 challenging its validity. Thus, their motion is directly contrary to their previous Court Action in that it assumes that the Order of March 6, 1975 was valid and binding. St. Patrick's as intervenor defended the law suit. As was concluded in Krekeler v. St. Louis County Board of Zoning Adjustment, 422 S.W.2d 265 (Sup.Ct.Mo. 1967), a party whose litigation has brought about the delay in seeking a permit is estopped from relying on the delay for which it is responsible.

Thirdly, the District of Columbia Court of appeals mandate was not issued until September 17, 1975; and, in our view, the applicant has a right to file for a building permit until March 17, 1976, six months later. The applicant did not lose the right under the grant of the special exception since, in our opinion, the appeal from our decision tolled the running of the six-month time period of Section 8205. Otherwise, a successful applicant before the Board would be required to proceed in the face of litigation challenging the Board's Order prior to a resolution of the litigation. Such a situation would force an applicant, even when it is willing to await the outcome of a court decision, to undergo substantial expenses in preparation of its application for a building permit as required under Section 8103 of the Zoning Regulations. Moreover, case law in other jurisdictions supports our conclusion as does a Corporation Counsel opinion dated November 18, 1974. See Krekeler, supra; Belfer v. Building Commissioner of Boston, 294 N.E.2d 857 (Mass. Sup.Jud.Ct. 1973).

ORDERED:

That the above application be and the same is hereby GRANTED subject to the following condition:

a. Applicants shall meet the requirements of the Department of Transportation with regard to providing an arrival and departure facility within public space.

VOTE:

3-0 (William S. Harps recusing himself and Lilla Burt Cummings, Esq. not present to vote)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By:



STEVEN E. SHER

Acting Secretary to the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

FINAL DATE OF ORDER: FEB 19 1976